

Calendar No. 253

112TH CONGRESS
1ST SESSION**S. 1886**

To prevent trafficking in counterfeit drugs.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2011

Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. BENNET, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Mrs. FEINSTEIN, Mr. COONS, Mr. KYL, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

DECEMBER 8, 2011

Reported by Mr. LEAHY, without amendment

A BILL

To prevent trafficking in counterfeit drugs.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Counterfeit Drug Pen-
 5 alty Enhancement Act of 2011”.

6 **SEC. 2. COUNTERFEIT DRUG PREVENTION.**

7 Section 2320(a) of title 18, United States Code, is
 8 amended—

1 (1) by redesignating paragraph (2) as para-
2 graph (3);

3 (2) by inserting after paragraph (1) the fol-
4 lowing:

5 “(2) COUNTERFEIT DRUGS.—

6 “(A) IN GENERAL.—Whoever commits an
7 offense in violation of paragraph (1) with re-
8 spect to a drug (as defined in section 201 of the
9 Federal Food, Drug, and Cosmetic Act (21
10 U.S.C. 321)) shall—

11 “(i) if an individual, be fined not more
12 than \$4,000,000, imprisoned not more
13 than 20 years, or both; and

14 “(ii) if a person other than an indi-
15 vidual, be fined not more than
16 \$10,000,000.

17 “(B) MULTIPLE OFFENSES.—In the case
18 of an offense by a person under this paragraph
19 that occurs after that person is convicted of an-
20 other offense under this paragraph, the person
21 convicted—

22 “(i) if an individual, shall be fined not
23 more than \$8,000,000, imprisoned not
24 more than 20 years, or both; and

1 “(ii) if other than an individual, shall
 2 be fined not more than \$20,000,000.”; and
 3 (3) in paragraph (3)(B), as redesignated, by
 4 striking “paragraph (1)” and inserting “paragraph
 5 (1) or (2)”.

6 **SEC. 3. SENTENCING COMMISSION DIRECTIVE.**

7 (a) DIRECTIVE TO SENTENCING COMMISSION.—Pur-
 8 suant to its authority under section 994(p) of title 28,
 9 United States Code, and in accordance with this section,
 10 the United States Sentencing Commission shall review and
 11 amend, if appropriate, its guidelines and its policy state-
 12 ments applicable to persons convicted of an offense under
 13 section 2320(a)(2) of title 18, United States Code, in
 14 order to reflect the intent of Congress that such penalties
 15 be increased in comparison to those currently provided by
 16 the guidelines and policy statements.

17 (b) REQUIREMENTS.—In carrying out this section,
 18 the Commission shall—

19 (1) ensure that the sentencing guidelines and
 20 policy statements reflect the intent of Congress that
 21 the guidelines and policy statements reflect the seri-
 22 ous nature of the offenses described in subsection
 23 (a) and the need for an effective deterrent and ap-
 24 propriate punishment to prevent such offenses;

1 (2) consider the extent to which the guidelines
2 may or may not appropriately account for the poten-
3 tial and actual harm to the public resulting from the
4 offense;

5 (3) assure reasonable consistency with other
6 relevant directives and with other sentencing guide-
7 lines;

8 (4) account for any additional aggravating or
9 mitigating circumstances that might justify excep-
10 tions to the generally applicable sentencing ranges;

11 (5) make any necessary conforming changes to
12 the sentencing guidelines; and

13 (6) assure that the guidelines adequately meet
14 the purposes of sentencing as set forth in section
15 3553(a)(2) of title 18, United States Code.

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